



## DEPARTMENT OF TRANSPORTATION

### National Highway Traffic Safety Administration

[Docket No. NHTSA-2019-0053]

**Saleen Automotive Inc.;**  
**Receipt of Petition for a Temporary Exemption from all requirements of FMVSS**  
**No. 126 and the Air Bag Requirements of FMVSS No. 208**

**AGENCY:** National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

**ACTION:** Notice of receipt of a petition for a temporary exemption, request for comment.

**SUMMARY:** Saleen Automotive Inc. has petitioned NHTSA for a temporary exemption from all requirements of Federal Motor Vehicle Safety Standard (FMVSS) No. 126, “Electronic stability control for light vehicles,” and from the air bag requirements of FMVSS No. 208, “Occupant crash protection,” for its newly-designed S1 model. Saleen is seeking a one-year exemption from these standards, asserting that compliance with these standards would cause substantial economic hardship, and that it has tried in good faith to comply with the standards. NHTSA is publishing this notice of receipt of the application in accordance with its exemption regulations, and has not made any judgment on the merits of the application.

**DATES:** If you would like to comment on the petition, you should submit your comments not later than [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

**FOR FURTHER INFORMATION CONTACT:** For electronic stability control:

David Jasinski. For air bags: Daniel Koblenz. Both of these officials can be reached at:

Office of Chief Counsel, National Highway Traffic Safety Administration, 1200 New Jersey Avenue S.E., Washington, D.C. 20590. Telephone: 202-366-2992; Facsimile: 202-366-3820.

**ADDRESSES:** You may submit your comment, identified by the docket number in the heading of this document, by any of the following methods:

- Federal eRulemaking Portal: Go to <http://www.regulations.gov>. Follow the online instructions for submitting comments.
- Fax: 1-202-493-2251.
- Mail: U.S. Department of Transportation, Docket Operations, M-30, Room W12-140, 1200 New Jersey Avenue, S.E., Washington, D.C. 20590.
- Hand Delivery: 1200 New Jersey Avenue, S.E., West Building Ground Floor, Room W12-140, Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

*Instructions:* All submissions must include the agency name and docket number.

Note that all comments received will be posted without change to <http://www.regulations.gov>, including any personal information provided. Please see the Privacy Act discussion below. NHTSA will consider all comments received before the close of business on the comment closing date indicated above. To the extent possible, NHTSA will also consider comments filed after the closing date.

*Docket:* For access to the docket to read background documents or comments received, go to <http://www.regulations.gov> at any time or to 1200 New Jersey Avenue, S.E., West Building Ground Floor, Room W12-140, Washington, D.C. 20590, between 9 a.m. and 5 p.m. Monday through Friday, except Federal Holidays. Telephone: 202-366-9826.

*Privacy Act:* In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, to [www.regulations.gov](http://www.regulations.gov), as described in the system of records notice, DOT/ALL-14 FDMS, accessible through [www.dot.gov/privacy](http://www.dot.gov/privacy). In order to facilitate comment tracking and response, the agency encourages commenters to provide their name, or the name of their organization; however, submission of names is completely optional. Whether or not commenters identify themselves, all timely comments will be fully considered. If you wish to provide comments containing proprietary or confidential information, please see below.

*Confidential Business Information:* If you wish to submit any information under a claim of confidentiality, you should submit three copies of your complete submission, including the information you claim to be confidential business information, to the Chief Counsel, NHTSA, at the address given under FOR FURTHER INFORMATION CONTACT. In addition, you should submit a copy, from which you have deleted the claimed confidential business information, to Docket Management at the address given above. When you send a comment containing information claimed to be confidential business information, you should include a cover letter setting forth the information specified in our confidential business information regulation (49 CFR Part 512).

#### **SUPPLEMENTARY INFORMATION:**

##### **I. Statutory Authority for Temporary Exemptions**

The National Traffic and Motor Vehicle Safety Act (Safety Act), codified as 49 U.S.C. Chapter 301, provides the Secretary of Transportation authority to exempt, on a temporary basis and under specified circumstances, motor vehicles from a motor vehicle

safety standard or bumper standard. This authority is set forth at 49 U.S.C. 30113. The Secretary has delegated the authority for implementing this section to NHTSA.

A manufacturer may request an exemption under one of four enumerated statutory bases, one of which is “economic hardship.” To grant an economic hardship exemption, NHTSA must find that an exemption is consistent with the public interest and the Safety Act, and that “compliance with the standard would cause substantial economic hardship to a manufacturer that has tried to comply with the standard in good faith.” If NHTSA is able to make the requisite findings to grant an economic hardship exemption, NHTSA is authorized to grant a manufacturer an exemption to produce for sale or otherwise deploy in interstate commerce not more than 10,000 motor vehicles annually, on such terms NHTSA deems appropriate.

NHTSA established Part 555, Temporary Exemption from Motor Vehicle Safety and Bumper Standards, to implement the statutory provisions concerning temporary exemptions. Under Part 555, a petitioner must provide specified information in submitting a petition for exemption. These requirements are specified in 49 CFR 555.5, and include a number of items. Foremost among them are that the petitioner must set forth the basis of the application under § 555.6, and the reasons why the exemption would be in the public interest and consistent with the objectives of 49 U.S.C. Chapter 301.

A manufacturer is only eligible to apply for a hardship exemption if its total motor vehicle production in its most recent year of production did not exceed 10,000 vehicles (49 U.S.C. 30113).

While 49 U.S.C. 30113(b) states that exemptions from a Safety Act standard are to be granted on a “temporary basis,”<sup>1</sup> this refers to the period of production, and not the period during which exempted vehicles may be operated. The statute also expressly provides for renewal of an exemption on reapplication.

## **II. Background on Electronic Stability Control Requirements**

In April 2007, NHTSA published a final rule establishing FMVSS No. 126, to require vehicles with a gross vehicle weight rating of 4,536 kilograms (kg) (10,000 pounds) or less be equipped with electronic stability control (ESC) systems. ESC systems use automatic computer-controlled braking of individual wheels to address critical situations in which a driver may lose control of the vehicle.

Preventing single-vehicle loss-of-control crashes is the most effective way to reduce deaths resulting from rollover crashes. This is because most loss-of-control crashes culminate in the vehicle leaving the roadway, which dramatically increases the probability of a rollover. NHTSA’s crash data study of existing vehicles equipped with ESC demonstrated that these systems reduce fatal single-vehicle crashes of passenger cars by 55 percent and fatal single-vehicle crashes of light trucks and vans (LTVs) by 50 percent.<sup>2</sup> NHTSA estimates that ESC has the potential to prevent 56 percent of the fatal passenger car rollovers and 74 percent of the fatal LTV first-event rollovers that would otherwise occur in single-vehicle crashes.<sup>3</sup>

The ESC requirement became effective for substantially all light vehicles on September 1, 2011. Since then, NHTSA has received two exemption requests from the

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<sup>1</sup> 49 U.S.C. 30113(b)(1).

<sup>2</sup> Sivinski, R., Crash Prevention Effectiveness of Light-Vehicle Electronic Stability Control: An Update of the 2007 NHTSA Evaluation; DOT HS 811 486 (June 2011).

<sup>3</sup> *Id.*

ESC requirement under the “economic hardship” basis, one of which was withdrawn and the other of which the agency granted.<sup>4</sup>

### **III. Background on Air Bag Requirements**

In 2000, NHTSA upgraded the requirements in FMVSS No. 208 for air bags in passenger cars and light trucks, to require what are commonly known as “advanced air bags.” This upgrade was intended to meet the twin goals of improving protection for occupants of all sizes, belted and unbelted, in moderate-to-high-speed crashes, and of minimizing the risks posed by air bags to infants, children, and other occupants, especially in low-speed crashes. The “advanced air bag” rule was the culmination of a comprehensive plan that the agency announced in 1996 to address the adverse effects of air bags, especially with regard to out-of-position children. The rule accomplished this primarily by establishing new test requirements and injury criteria and specifying the use of an entire family of test dummies: the then-existing dummy representing 50th percentile adult males, and new dummies representing 5th percentile adult females, 6-year-old children, 3-year-old children, and 1-year-old infants. The new requirements were phased in, beginning with the 2004 model year. Small volume manufacturers were not subject to the advanced air bag requirements until the end of the phase in period, i.e., September 1, 2006.

In the years immediately following NHTSA’s publication of the 2000 advanced air bag rule, NHTSA received and granted a number of “economic hardship” exemptions

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<sup>4</sup> See Terrafugia, Inc.; Grant of Application for Temporary Exemption From Certain Requirements of FMVSS No. 110, Tire Selection and Rims for Motor Vehicles, FMVSS No. 126, Electronic Stability Control Systems, FMVSS No. 205, Glazing Materials, and FMVSS No. 208, Occupant Crash Protection, 76 FR 38270 (June 1, 2012).

to permit the manufacture and sale of vehicles without any air bags.<sup>5</sup> NHTSA granted these exemptions due to the relative newness of the technology at the time, and the high costs associated with developing any kind of air bag system for limited-run vehicles. However, by the time the advanced air bag requirements became effective in 2006, air bag technology had matured to the point that most low-volume manufacturers were seeking a hardship exemption from only the advanced air bag requirements in FMVSS No. 208. Those manufacturers were providing standard (non-advanced) air bags, even when they found that advanced air bags were still not economically feasible.<sup>6</sup> Given the increased availability of non-advanced air bags to low-volume manufacturers, NHTSA announced in 2007 that “it is generally not in the public interest or consistent with the Safety Act to grant new economic hardship exemptions to permit light vehicles to be sold without air bags.”<sup>7</sup> As advanced air bag systems have become increasingly feasible for small manufacturers to provide, NHTSA has become increasingly skeptical of granting exemptions from advanced air bag requirements, noting in 2011 that “the expense of advanced air bag technology is not now sufficient, in and of itself, to justify the grant of a petition for a hardship exemption from the advanced air bag requirements.”<sup>8</sup> Since announcing this change in policy, NHTSA has received two very limited requests for an

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<sup>5</sup> E.g., Panoz Auto Development Company; Grant of Application for Temporary Exemption From Federal Motor Vehicle Safety Standard No. 208, 66 FR 6757 (Jan. 22, 2001).

<sup>6</sup> E.g., Ferrari S.p.A and Ferrari North America, Inc. Grant of Application for a Temporary Exemption From S14.2 of Federal Motor Vehicle Safety Standard No. 208, 71 FR 166 (May 22, 2006).

<sup>7</sup> SS II of America, Inc.; Denial of Application for a Temporary Exemption From the Air Bag Requirements of FMVSS No. 208, 72 FR 30426 (May 31, 2007).

<sup>8</sup> See Pagani Automobili SpA; Denial of Application for Temporary Exemption From Advanced Air Bag Requirements of FMVSS No. 208, 76 FR 47641 (August 5, 2011).

exemption from advanced air bag requirements based on economic hardship, both of which the agency granted.<sup>9</sup>

#### **IV. Overview of Petitions**

On March 14, 2019, Saleen Automotive Inc. (Saleen) submitted a petition for a temporary exemption from the electronic stability control requirements of FMVSS No. 126. On the same date, Saleen separately sought an exemption from the air bag requirements of FMVSS No. 208.<sup>10</sup> Both petitions request an exemption on the basis that compliance would cause the petitioner substantial economic hardship and that the petitioner has tried in good faith to comply with the standard. To view non-confidential versions of the petitions, go to <http://www.regulations.gov> and enter the docket number set forth in the heading of this document. For administrative purposes, NHTSA is addressing both petitions in this notice. NHTSA will evaluate the merits of granting each exemption request separately. However, as part of the assessment of the merits of each petition, NHTSA will also consider the cumulative effect of granting multiple exemptions to the same manufacturer for the same vehicle.

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<sup>9</sup> See, e.g., Group Lotus plc; Grant of Petition for a Temporary Exemption From an Advanced Air Bag Requirement of FMVSS No. 208, 78 FR 15114 (March 8, 2013) (exemption from only the 35 MPH belted test requirement using 5th percentile adult female dummies); Tesla Motors, Inc. Grant of Petition for Renewal of a Temporary Exemption From the Advanced Air Bag Requirements of FMVSS No. 208, 76 FR 60118 (Sept. 28, 2011) (exemption limited to 40 days to accommodate the end of production of Roadster model).

<sup>10</sup> NHTA has previously granted Saleen exemptions from the air bag requirements of FMVSS No. 208. In 2001, NHTSA granted Saleen a three-year exemption from the standard air bag requirements of FMVSS No. 208 on the basis of economic hardship, which NHTSA renewed for another three years in 2004. In 2006, when the advanced air bag requirements were being phased in, Saleen again requested NHTSA to renew its exemption from the standard air bag requirements for three years, and also requested a new three-year exemption from the advanced air bag requirements. Although NHTSA granted Saleen's request for a three-year exemption from the advanced air bag requirements in full, the agency renewed Saleen's exemption from the standard air bag requirements for only one year. NHTSA explained that this was because granting a renewal for three years would not be in the public interest considering the safety benefits that air bags provide. See Saleen, Inc.; Response to Application for Temporary Exemption From Certain Provisions of Federal Motor Vehicle Safety Standard No. 208, 71 FR 52869 (September 7, 2006).

It is important to note that Saleen requested these earlier exemptions in order to modify vehicles manufactured by other companies. By contrast, today's petition concerns a line of vehicles that Saleen intends to manufacture itself.



Saleen is a U.S. company incorporated under the laws of the State of Nevada. Saleen's headquarters is in Corona, California. Saleen has not manufactured any vehicles in the 12 months prior to filing its exemption requests.

Saleen seeks an exemption to permit the manufacture and sale of its S1 model, which is a new passenger car model. Saleen provides various vehicle and engine specifications for the S1 in its petitions. Saleen seeks a one-year exemption from June 15, 2019 to June 15, 2020. Saleen states that it plans to produce no more than 3,500 units under the exemption in the United States. Saleen states that it expects to fully comply with both FMVSS Nos. 126 and 208 at the end of the one-year exemption period.

#### Electronic Stability Control (ESC)

It appears from the petition that exempted vehicles will not be equipped with an electronic stability control (ESC) system. Saleen asserts that it will need to expend approximately 2,000 man-hours to complete ESC certification.<sup>11</sup> Saleen states that the expenditures on the system would be the same whether it receives an exemption or not. However, Saleen states that it will take approximately 15 months to develop and validate an ESC system and that sales from an exempt vehicle can be used to finance that development. Without an exemption, Saleen states that it may not be able to sustain the development of the vehicle, which would cause financial hardship to the company.

Saleen states that, as an alternative to having an ESC system developed specifically for the S1, it sought to use an available ESC system from another vehicle in the automotive market. However, Saleen found that all ESC systems are designed to the specific geometry, deployment, occupant arrangement, and styling features of a vehicle.

#### Air Bags

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<sup>11</sup> Saleen does not specify what activities these man-hours will be spent on.

It appears from the petition that exempted vehicles will not be equipped with frontal air bags of any type (neither standard nor advanced). Saleen asserts that it will need to expend 3,300 man-hours to develop air bags that comply with FMVSS No. 208.<sup>12</sup> Saleen states that the expenditures toward a compliant occupant crash protection system would be the same whether it receives an exemption or not. However, Saleen states that it will take approximately 18 months to develop and validate an occupant crash protection system,<sup>13,14</sup> and that sales from an exempt vehicle can be used to finance that development. Without an exemption, Saleen states that it may not be able to sustain the development of the vehicle, which would cause financial hardship to the company.

Saleen states that it tried three separate avenues to achieve compliance with FMVSS No. 208. First, Saleen investigated using available air bag systems currently used in other vehicles on the market. However, Saleen found this was not a viable option because the air bags are designed to fit the specific geometry of a vehicle, and the S1 is a new vehicle with a different design geometry. Second, Saleen investigated equipping the S1 with a single-stage (i.e., non-advanced) air bag, such as those used in non-US markets. Saleen found that, in addition to these single-stage systems not being FMVSS No. 208-compliant, adapting these single-stage air bag systems so that they can be installed in the S1 would take a similar amount of time as developing a compliant advanced air bag system, and thus would not meet Saleen's start-of-production deadline. Third, Saleen investigated providing a computer simulation analysis to show that the S1 would "comply

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<sup>12</sup> Saleen does not specify what activities these man-hours will be spent on.

<sup>13</sup> Saleen's FMVSS No. 208 petition contained a discrepancy regarding the development time for a compliant air bag system. On page 6, the petition stated that the development time would be 15 months, but on page 8, the petition stated the development time would be 18 months. NHTSA reached out to Saleen by email to clarify this discrepancy, to which Saleen replied that the development time would be 18 months. A copy of this email exchange has been placed in the docket indicated in the header of this notice.

<sup>14</sup> We note that the 18-month time period to develop a compliant air bag system indicated by Saleen could extend past the end date of Saleen's requested 1-year exemption period.

structurally” with several crashworthiness standards, including FMVSS No. 208.<sup>15</sup>

However, Saleen states that this simulation testing was not scheduled to begin until the first quarter of 2019.

#### Public Interest

Saleen states in both petitions that an exemption would be in the public interest and consistent with the objective of the Safety Act because the development of the S1 provides direct employment to approximately 30 employees and indirect employment to over 100 employees. Saleen further projects that, once production of the S1 starts, the S1 would support numerous additional jobs relating to the distribution and sale of the vehicle.

#### **V. Comment Period**

NHTSA seeks comment from the public on the merits of Saleen’s application for a temporary exemption from FMVSS No. 126 and the air bag requirements of FMVSS No. 208. After considering public comments and other available information, NHTSA will publish a notice of final action on the application in the **Federal Register**.

(Authority: 49 U.S.C. 30113; delegation of authority at 49 CFR 1.95.)

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<sup>15</sup> The petition does not explain what is meant by “comply structurally.”

Issued under authority delegated in 49 CFR 1.95 and 501.5.

**Heidi Renate King,**  
*Deputy Administrator.*

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